Chapter II.11

The Road to 9th WTO Ministerial Conference: Issues and challenges

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II.11 The Road to 9th WTO Ministerial Conference: Issues and Challenges

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1. Introduction

Members of the World Trade Organization (WTO) will shortly meet congregate in Bali for the ninth Ministerial Conference. This meeting will take place 12 years after the decision was taken to launch the Doha Round negotiations. The time that has elapsed since the commencement of the Doha Round is an eloquent testimony to the fact that the current Round has been the most vexatious of all the negotiating rounds that the multilateral trading system has witnessed since it was established in 1948. The present impasse seems hardly surprising given the wide range of interests across the diverse groups of countries that have articulated their views in the negotiations.[56] This complexity seems to have escaped the architects of the Doha Round, for they initially gave the Member countries no more than four years to complete the deal, which included at least three major components, in addition to several specific issues of critical concern.

The first component was the so-called 'implementation issues',[57] arising from the problems in implementing Uruguay Round commitments, which were mainly highlighted by the developing countries. The second component included the agenda for furthering the trade liberalization agenda across all sectors, while the third was the proposal to include four new areas, namely investment, competition policy, government procurement and trade facilitation (the 'Singapore issues') within the ambit of the WTO. Among the specific issues, the most significant was the threat posed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the realization of public health imperatives.[58] All the components of the

[56] A recent count shows that there are 27 groups in the WTO, most of which were formed during the Doha Round. For details, see 'Groups in the WTO', Updated 2 March 2013, (accessed from: http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf).
[57] For details, see, WTO (2001), Implementation-Related Issues and Concerns, Decision of 14 November 2001, WT/MIN(01)/17, 20 November.
[58] This concern was reflected in the adoption of the Doha Declaration on the TRIPS Agreement and Public Health.

negotiating mandate were expected to be addressed keeping in view the development concerns of developing countries. Reflecting this expectation was the fact that the negotiating mandate for the Doha Round came to be better known as the 'Doha Development Agenda' (DDA).[59]

An often-ignored aspect of the Doha Round is that its architects envisioned a balanced outcome by ensuring that negotiations in all mandated areas would be concluded simultaneously. This was reflected in their agreement that the outcome would be in the nature of a 'single undertaking', which really meant that the 'Doha Deal' can only be done when WTO Members had concluded agreements in all areas. The WTO-speak in this regard said it all: 'nothing is agreed until everything is agreed'. In practical terms this approach was extremely significant since it sought to curb the tendencies of the more dominant countries to conclude agreements in areas that best suited their interests (euphemistically called 'cherry picking') and to go slow in (or even ignore) areas in which they had to make concessions. Thus, countries could engage in inter-sectoral trade-offs, and this was seen as a big step towards ensuring a balanced outcome.[60]

The lofty ambitions set for the Doha Round have eroded rapidly, particularly since the breakdown of the negotiations in July 2008. The narrow focus of the issues being discussed in the run-up to Bali underlines the extent of the erosion that the negotiating mandate has suffered. The agenda that is engaging the membership looks thin in relation to the overall negotiating mandate of the Doha Round, as it will

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For details see, Declaration on the TRIPS Agreement and Public Health, Adopted on 14 November 2001, WT/MIN(01)/DEC/2, 20 November.

[59] The Doha Ministerial Declaration alluded to the development dimension, while stating the following: 'The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Program adopted in this Declaration'; WTO (2001), Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1, 20 November, paragraph 2.

[60] Ministers of WTO Members agreed that '... the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations'. WTO (2001), Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1, 20 November, paragraph 47.

likely be confined to three areas, namely, agriculture, trade facilitation and a package for the least-developed countries (LDCs). Furthermore, with regard to agriculture, two groups of developing countries have rekindled interest by focusing on specific issues with a view to reaching some agreement in the Bali Ministerial.

As they prepare for the Bali Ministerial, WTO Members are faced with two sets of challenges. First, it is difficult to conceive of a Ministerial Conference that would have such a limited agenda. The challenge is to include other issues in the agenda without risking a failed outcome.

While preparing for Bali, what should really concern the WTO membership is the future of the organization, in particular how to make it relevant for its membership. In our view, this issue has at least two dimensions. The first is to make the organization respond to the needs of the new drivers of trade in the 21st century. One way of doing so would be to consider the support it can lend to the present-day drivers of trade and investment, i.e. the production networks that are increasingly crossing multiple national boundaries. The second is to reflect on making the organization more efficient in terms of the critical decisions it is able to take.

This chapter reflects on the dimensions referred to above. First, the chapter considers the issues that are currently figuring in the discussions and the possibilities of arriving at negotiated outcomes at the Ministerial. The second section briefly takes up the issue of how best to make the WTO more relevant, keeping in view the trade and development imperatives.

2. The current focus areas

A few weeks ahead of the Bali Ministerial, WTO Members are engaged in discussions on three areas- trade facilitation, agriculture and a package for the LDCs. Since its inclusion in the negotiating mandate in 2004, trade facilitation has appeared the most likely area on which WTO Members could reach an agreement. Over the past couple of years, text-based negotiations on the issue have made considerable progress, though some concerns remain, particularly relating to special and differential treatment (S&DT) provisions for developing countries.

Dynamics in the agriculture negotiations have been quite the opposite. Differences between the major protagonists have effectively stalled the negotiations since 2008. In the run-up to Bali, agriculture has been identified as a priority area by two groups of developing countries. While the G-33 is seeking amendments to the domestic support provisions in the Agreement on Agriculture (AoA), aimed at promoting food security, the G-20 has proposed strengthening the export competition pillar.

Finally, the LDCs are seeking decisions in several specific areas that would enable them to take fuller advantage of the duty-free-quota-free arrangement agreed to in the Hong Kong Ministerial in 2005. This proposal also seeks to address the problem being faced by the Cotton-4 countries (Benin, Burkina Faso, Chad and Mali) arising from the subsidies granted by the advanced countries to their producers.

2.1 Trade facilitation

Although several of its elements form a part of the GATT, trade facilitation (TF) was unveiled as an integrated framework to address a range of customs-related issues, including that of transit, at the first WTO Ministerial Conference in Singapore in 1996. The issue thus became one of the 'Singapore Issues', along with investment, competition and government procurement. After much discussion, the issue was included in the WTO work program in the Doha Ministerial Conference. While the other 'Singapore Issues' were taken off the table in the Doha Round for want of consensus,[61] TF was included in negotiations as a part of the 'July package' in

[61] In respect of each of the 'Singapore Issues', the Doha Ministerial Declaration had stated 'that the negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, *by explicit consensus*, at that Session on modalities of negotiations'. See WTO (2001), Ministerial Declaration: Adopted on 14 November 2001, Ministerial Conference, Fourth Session, WT/MIN(01)/DEC/1, paragraphs 20–27.

2004.[62]

TF negotiations are mandated to produce an appropriate set of rules both from a technical point of view and from the perspective of the development imperatives of developing countries. In more precise terms, the negotiations 'aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit'. The negotiations are also aimed at enhancing 'technical assistance and support for capacity building' and to develop 'provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues'. The negotiations are expected to 'take fully into account the principle of special and differential treatment for developing and least-developed countries' and in this spirit the mandate clarifies that the countries in question are not expected 'to undertake investments in infrastructure projects beyond their means'.

Developing countries were initially opposed to the expansion of the remit of the WTO by including TF in the Doha agenda if adequate efforts were not made to address issues arising from the implementation of the Uruguay Round commitments. They questioned the developmental impact of TF, besides arguing that they did not have the resources to implement the commitments that the proposed agreement would impose on them.

However, despite the initial skepticism, there seems to be an emerging consensus that developing countries would benefit from a WTO Agreement on TF. A widely accepted view is that in developing countries customs procedures and the supporting infrastructure are generally not very efficient, and that this results in higher transaction costs. 'Doing Business', the annual survey of the World Bank endorses this point.

[62] WTO (2004), Doha Work Program: Decision Adopted by the General Council on 1 August 2004, WT/L/579, Annex D, Page D-1.

Given the weight of evidence emerging in favor of the various elements of TF, including simplification and harmonization of customs procedures and improvement of border infrastructure and management systems, introduction of these measures would not only increase developing countries' capacity to trade, but business interests in these countries will also be able to integrate into global supply chains. Better coordination amongst the customs authorities would increase operating efficiency, and this in turn would enable the system to generate more revenue through a transparent mechanism. A recent study conducted by the OECD Secretariat using data on 'trade facilitation indicators' from 106 non-OECD countries, which included 95 WTO Members and 11 WTO observers, showed that the benefits accruing to developing countries, as both importers and exporters, can be substantial if appropriate reforms are undertaken.[63]

The negotiations on TF have been dealing with a plethora of issues that could eventually form part of the agreement. These include issues relating to transparency, release and clearance of cargo, introduction of risk management, post-clearance audits, instituting a single window for the clearance of goods, elimination of pre-shipment and post-shipment inspections, and uniform forms and documentation requirements for the clearance of goods. Besides the above-mentioned aspects, freedom of transit and customs cooperation are further key elements of discussion.

While the broad contours of an Agreement on TF seem clear, some contentious issues are engaging the WTO Members. In recent months, the Draft Consolidated Negotiating Text[64] has moved forward by 'eliminating a further batch of square brackets'[65]. At the same time, however, differences persist, particularly on the extent

[63] OECD (2012), Trade Facilitation Indicators: The potential impact of trade facilitation on developing countries' trade, Working Party of the Trade Committee, TAD/TC/WP(2012)24 (accessed from: http://www.oecd.org/dac/aft/TradeFacilitationIndicators_ImpactDevelopingCountries.pdf).

[64] For the most recent version, see WTO (2013), Draft Consolidated Negotiating Text, Trade Negotiations Committee, TN/C/W/63, 31 May.

[65] "Members approaching last petrol station before Bali - Lamy", Trade Negotiations Committee Informal Meeting,

of flexibilities that are to be included in the agreement, which are of primary interest to the developing countries. Moreover, these countries have been insisting on the inclusion of effective provisions on special and differential treatment, including firm commitments on capacity building and technical assistance, which will enable them to rise to the implementation challenges deriving from the proposed agreement.

Despite the progress made in the TF negotiations, there are obstacles in moving the negotiating process on TF towards an eventual agreement. Major developing countries like India and Brazil are not likely to favor a 'stand-alone' outcome as TF is an integral part of the Doha package, which is to result in a 'balanced package'. In other words, these countries will be reluctant to agree on a deal on TF without agreement on some of the key areas in the Doha negotiating mandate. Again, while there is no doubt that most of the less developed countries would benefit from an eventual deal on TF, it is also evident that the benefits would accrue to them only if adequate doses of technical assistance and capacity building programs are extended. It thus appears likely that an eventual agreement on TF critically depends on the progress that is made in other areas in the weeks ahead.

2.2 Agriculture

In the run-up to the Bali Ministerial, both the G-33 and the G-20 have identified areas in which they are looking for changes to the AoA. The former group has pushed for early agreement to address food security issues, while the latter is seeking clear directions for introducing new disciplines in the export competition pillar of the AoA, which includes the issues of export subsidies, export credits and international food aid.

G-33 proposal on food security

Towards the end of 2012, the G-33 tabled a proposal for the inclusion of specific

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3 June 2013 (accessed from: http://www.wto.org/english/news_e/news13_e/tnc_infstat_03jun13_e.htm).

elements in the Draft Modalities addressing the problem of food security.[66] Since food prices reached record levels in 2007–2008, food security has become a major concern in many countries in the Asian region. In the aftermath of the crisis, ASEAN Member States adopted the Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS) as part of the ASEAN Integrated Food Security Framework.[67] Among other things, the SPA-FS focuses on enhancing food production, promoting availability and accessibility to agriculture inputs, and operationalizing regional food emergency relief arrangements. In recent years, India has also taken measures to improve food production, which have resulted in production reaching record levels. At the same time, the Government of India has taken measures to help food to reach the poorest people through the Food Security Act.[68]

The G-33 proposal seeks to ensure that the above-mentioned initiatives of the governments are implemented successfully through three amendments in the 'Green Box' (Annex 2 of AoA). These proposals are not new, having been included in the Draft Modalities introduced by the then Chair of the Committee on Agriculture in 2008. By tabling the proposals now, the G-33 is aiming at a decision in the Bali Ministerial comprising the elements they have proposed.

The first of the proposed amendments aims at allowing developing countries to make payments on specific activities to promote rural development and poverty alleviation without being subjected to any disciplines introduced by the AoA. Thus, an amendment of paragraph 2 of Annex 2 of the AoA was proposed to include payments by developing countries for farmer settlement, land reforms, rural development and rural livelihood security, such as provision of infrastructural services, land

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[66] WTO (2012), G-33 Proposal on Some Elements of TN/AG/W/4/Rev.4 for Early Agreement to Address Food Security Issues, Committee on Agriculture, Special Session, 13 November.

[67] ASEAN Integrated Food Security (AIFS) Framework and Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS): 2009-2013 (accessed from: http://aseanfoodsecurity.asean.org/wp-content/uploads/2011/08/aifs.pdf).

[68] Government of India (2013), The National Food Security Ordinance 2013, No. 7 of 2013, The Gazette of India, Extraordinary, Part II, 5 July (accessed from: http://dfpd.nic.in/fcamin/homepage/NationalFoodSecurityOrdinance2013.pdf).

rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programs, nutritional food security, issuance of property titles and settlement programs.

Secondly, the G-33 proposed that the existing provisions relating to public stockholding for food security purposes should be amended so that developing countries can spend on acquisition of stocks of foodstuffs for supporting low-income or resource-poor producers and the cost of so doing will not be accounted for in their subsidies' bills. Two textual amendments that these countries have proposed would therefore allow developing countries to implement food security programs 'with the objective of fighting hunger and rural poverty' by procuring foodstuffs from the poorer farmers at administered prices without being subjected to the AoA disciplines.

G-20 proposal on export competition

One of the major decisions taken at the 6th Ministerial Conference, held in Hong Kong in 2006, was that there would be 'parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect … by the end of 2013'.[69] However, even as recently as 2010–2011, the EU and its Member States, which have been the largest users of export subsidies, continued to use such support measures.[70]

In view of the non-implementation of the commitment made by members, the G-20 has proposed that a Ministerial Decision be adopted on export competition, which would include both export subsidies and export credits.[71] According to this proposal, by the end of 2013, developed country members shall reduce their export subsidy

[69] WTO (2005), Ministerial Declaration, Adopted on 18 December 2005, WT/MIN(05)/DEC, 22 December 2005, paragraph 6.

[70] The outlay on export subsidies was about € 177 million, while the quantity of subsidized products was nearly 2 million tons. As compared to 2009–2011, there was a halving of its outlay on export subsidies, but the quantity of subsidized exports had declined by a modest amount: from 2.5 million to 2 million tons. For details, see G/AG/N/EU/14, 13 June 2013 and G/AG/N/EU/6, 15 March 2012, Table ES.1

[71] WTO (2013), Ministerial Decision on Export Competition: G-20 Non-Paper, Committee on Agriculture Special Session, JOB/AG/24, 21 April.

commitments both in terms of outlay and quantity commitments as follows: (i) budgetary outlays shall be reduced by 50%, and (ii) export quantity commitments shall be reduced to the actual average of quantity levels in the 2003–2005 base period.

As regards export credits, the G-20 proposed that the maximum repayment term for developed countries should not be more than 540 days from the 'starting point of credit'[72] and ending on the contractual date of the final payment. The proposed Ministerial Declaration includes S&DT for developing countries. With regard to export subsidies, developing countries would continue to benefit from the provisions of Article 9.4 of the AoA[73] for five years after the end of all forms of export subsidies. Further, the limit for repayments of export credits proposed for developed countries would be applicable to the developing countries three years after the former begin implementing it.

The G-33 proposal on food security has emerged as a critical component in the run-up to the Bali Ministerial. Influential members of the G-33, including India, have argued that agreement in other areas, particularly trade facilitation, will hinge on the stand WTO Members take on their proposal. The United States has provided a contrary view, suggesting a work program to address concerns relating to food security.[74]

2.3 The LDC package

The 34-member group of LDCs in the WTO has presented a package arguing for the

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[72] The 'starting point of a credit' shall be no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period.

[73] These include provision of subsidies to reduce the costs of marketing exports of agricultural products and internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments.

[74] U.S. Blames Other WTO Members For Blocking Bali Deal Over Ag Demands, World Trade Online, 29 May 2013 (accessed from: http://insidetrade.com/201305292435870/WTO-Daily-News/Daily-News/us-blames-other-wto-members-for-blocking-bali-deal-over-ag-demands/menu-id-948.html).

inclusion of four areas in the outcome of the Bali Ministerial.[75] These are: (i) implementation of the duty-free and quota-free (DFQF) market access Decision taken by Members at the Hong Kong Ministerial Conference in 2005, (ii) preferential rules of origin, (iii) operationalization of the LDC Services waiver, and (iv) cotton. The LDCs have provided firm proposals on the first three areas for adoption in the Bali Ministerial.

In their submission, LDCs have stated that the DFQF Decision must be implemented fully so as to enable them to better integrate within the global economy. They have therefore argued that the developed countries, which had agreed that 97% of their imports from the LDCs would be DFQF, must fulfill their commitment by a date to be decided in Bali. The LDCs have also sought additional market access opportunities from developing country members. While several developing countries have already provided them DFQF market access for products, LDCs have insisted that such access should be available for at least 97% of all products originating in their respective territories.

Alongside this proposal, the LDCs have argued for an easing of rules of origin, which would enable them to take better advantage of the DFQF scheme. The proposal for which the LDCs have sought support in the Bali Ministerial is 'centered on an "across the board" Rule of Origin based on a percentage criterion'.[76] They have advanced this argument in order to avoid the proliferation of product-specific rules of origin. According to the LDCs, rules of origin negotiated product by product, and industry by industry, open the way for organized industries and lobby groups to devise rules of origin that diminish transparency and trade liberalization.

At the Eighth Ministerial Conference of the WTO in December 2011, trade ministers

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[75] WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, Trade Negotiations Committee, TN/C/W/63, 31 May.

[76] WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, TN/C/W/63, 31 May, paragraph 1.26.

adopted a decision on a ‘Service Waiver’ in favor of LDCs. This decision allowed developed and developing country Members to provide preferential treatment to the services and service suppliers of LDCs going beyond the notion of MFN treatment as provided for under Article II of the General Agreement on Trade in Services (GATS). The Waiver, which was agreed for an initial period of 15 years from the date of adoption, was intended to release WTO Members from their legal obligation to provide non-discriminatory treatment to all trading partners when granting trade preferences to LDCs.

LDCs have submitted that a year and half since the decision was adopted, the ‘Service Waiver’ still awaits operationalization. They point out that in order to operationalize the Waiver, LDCs’ trading partners will have to design and effectively implement new trade preference schemes covering services. Their view is that the extent to which the Waiver will actually lead to development results will not only depend on the provision of commercially meaningful preferences but also on the LDCs’ ability to overcome their supply-side constrains to effectively benefit from those preferences.

2.4 A proactive agenda for the WTO

Over the past two decades, Global Production Networks (GPNs) have emerged as a strong integrating force in the global economy. Not only have GPNs played a determining role in bringing economies closer together by stimulating the flows of goods and capital across countries, they have contributed to knowledge diffusion and have provided opportunities for local capabilities to emerge in countries that are part of such networks. This dimension has received relatively less attention in the literature on GPNs, which has discussed this new organizational form largely from the point of view of trade integration.

GPNs have been seen both as products of the process of liberalization of trade and financial flows and as the catalysts for ensuring a greater degree of openness in the global economy. Proponents of this thinking have argued that unshackling of the economies has triggered changes in the *modus operandi* of transnational corporations, converting them from 'tariff-hopping' investors to 'global network flagships' that have integrated their dispersed supply, knowledge and customer bases into the GPNs. Fragmentation of production caused by the 'network flagships' is assisted by the existence of a plethora of specialized network suppliers usually spread over a large geographical area.[77]

The logic of the GPNs demands a high degree of competence all along the supply chain. The suppliers to the network flagship, which is usually the point of assembly of the final product, are not only required to meet the exacting quality standards and the price of the intermediates they are responsible for, they also have to comply with rigid 'just-in-time' delivery schedules. But in order to ensure that the suppliers' performances meet expectations, the network flagships need to transfer technical and managerial knowledge to them. There is therefore a need to upgrade the suppliers' technical and managerial skills on a continuous basis. The increasing speed of product obsolescence seen in a large number of industries, in particular those producing products that use information and communications technology, puts pressure on the network flagships to upgrade the technologies of their suppliers.[78]

Network flagships transfer knowledge across borders using a range of mechanisms. In the first place, the transfer of knowledge may be mediated through market mechanisms, using licensing contracts and outright purchase of both technology and plant equipment among others, that may or may not involve FDI. Secondly, the network flagships may transfer technologies through the supply chain and, in doing

[77] Ernst, Dieter and Linsu Kim (2002), Global production networks, knowledge diffusion, and local capability formation, Research Policy, vol. 31, pp. 1417–1429.

[78] Bernhardt, Thomas and William Milberg (2011), Economic and Social Upgrading in Global Value Chains: Analysis of Horticulture, Apparel, Tourism and Mobile Telephones, New School for Social Research The New School – Department of Economics, Capturing the Gains Working Paper No. 2011/06 (accessed from: http://www.capturingthegains.org/pdf/ctg-wp-2010-03.pdf).

so, exercise control over the manner in which knowledge is disseminated to and used by the supplier. The control over the supply chain can be seen by the manner in which the operations of original equipment manufacturers, or the so-called ‘Tier I’ suppliers, are managed by the network flagships.

Irrespective of the nature of GPNs, i.e. whether they are producer-driven or buyer-driven, network flagships are able to influence the production process of their suppliers by actively transferring knowledge in the form of blueprints and technical specifications. The objective is to ensure that suppliers meet the technical standards required in the final products. Branded marketers like Nike and Reebok, managing their ‘buyer-driven’ networks, maintain close control over their suppliers by setting standards, sourcing raw materials, distributing them and, finally, importing the finished products. GPNs are also able to encourage firms participating in the networks to access knowledge through indirect mechanisms, for instance, through the import of sophisticated equipment to improve their production capabilities.

With the maturing of the production networks, the pattern of knowledge acquisition has also been undergoing changes. This has led to the phenomenon where firms in GPNs engage in innovative activities that have allowed them to move up the value chain and thereby given innovating firms greater scope to operate independently. The existence of successful GPNs, however, presupposes the existence of local suppliers who have the capabilities to absorb the knowledge disseminated by the networks. Furthermore, to remain in the GPN, local suppliers must constantly upgrade their absorptive capacity. Participation in GPNs cannot therefore be ensured unless local suppliers are able to develop their technological capabilities and prepare themselves for inclusion in these networks.

The proliferation of GPNs poses a significant challenge to the multilateral trading system because its basic construct centers on the existence of localized production within nation states. Production-sharing across national borders of the kind that has been spawned by GPNs requires new instruments and institutions that are supportive of such networks. This raises the need to focus on three behind-the-border areas, namely, trade facilitation measures, investment policy, and non-tariff barriers for the adoption possible globally accepted frameworks or agreements.

From the point of view of GPNs, justification for including trade facilitation in this group of issues is considerable. Enterprises participating in GPNs are required to meet tight delivery schedules. Transparent rules and adequate infrastructure at the border are the necessary wherewithal to help them realize their objectives. Reforms of existing facilities offered in different jurisdictions with a view to harmonizing them to the extent possible, given the resource constraints faced by developing countries in particular, are therefore desirable. In fact, negotiations on trade facilitation in the WTO are aimed at moving in this direction.

The multilateral agreement on investment became a non-starter after the OECD-backed proposal for such an agreement met resistance not only from the developing countries, but also from within the group of developed countries. Notwithstanding this development, there has been an unrelenting movement towards adoption of a *de facto* investment agreement at the global level through the proliferation of bilateral investment treaties and preferential trade agreements featuring embedded investment chapters. However, in recent years, evidence has been emerging on the nature of constraints that these agreements impose on host countries. Not surprisingly, there has been a steep increase in the number of disputes involving foreign investors and their host states. This development could be detrimental to the GPNs, since they are dependent on the cross-boundary movement of enterprises. There is therefore a need to better understand the contentious elements of existing investment agreements, which could then trigger a move towards a more equitable global investment regime.

Non-tariff barriers (NTBs) have been the insurmountable barrier that the multilateral trading system has had to cope with since its establishment. In recent years, technical barriers have emerged as the fountainhead of NTBs. This was confirmed in the course of the ongoing negotiations on non-agricultural market access. The proliferation of technical barriers and standards demands global action to tame them.

3. The road ahead

There is no doubt that the Bali Ministerial Conference is the most critical meeting that the WTO will convene in its less than two decades of existence. Ministers will not only be faced with the need to break the Doha Round logjam, they must also take decisions that will make the organization able to respond to the needs of the 21st century.

The immediate challenge is to steer the preparatory process in a direction that would allow the Ministers to take forward-looking initiatives. For this to happen, the agenda for Ministers must be significantly larger than the sum total of issues that are engaging the negotiators in Geneva. The key point of interest would be the ability of the new Director-General to expand the list of issues through the building of mutual trust.

There is of course an inherent risk in expanding the number of items on the discussion table. Proposals for introducing new items would also bring with them the divisive nature of politics that has plagued the Doha Round all these years. One such example is President Obama's proposal to launch plurilateral negotiations on environmental goods.[79]

It will be interesting to see if the Bali Ministerial addresses the most challenging issue

[79] The White House (2013), The President's Climate Action Plan, June 2013, pp. 19–20 (accessed from: http://insidetrade.com/iwpfile.html?file=jun2013%2Fwto2013_1996a.pdf).

facing the WTO, which is its inability to take decisions. In fact, former Director-General Pascal Lamy had quipped, in his earlier role as the Chief Negotiator of the European Union, that the WTO was a medieval organization in urgent need of reform.[80] However, despite being mindful of the need for reforms in the decision-making structures of the WTO, Lamy was unable to effect any change since the issue of institutional reforms has remained on the sidelines of WTO discussions. Trade Ministers could provide much-needed political support to initiate the process of discussions on institutional reforms that the WTO clearly needs.

[80] 'Brussels urges shakeup of "medieval" WTO', The Guardian, Tuesday 16 September 2003 (accessed from: http://www.guardian.co.uk/business/2003/sep/16/europeanunion.wto)